

WASTE 2 RESOURCES ADVISORY COMMITTEE

** MEETING SUMMARY **

November 19, 2013, 9:30 a.m.

Dean Large, Committee Chair, called the meeting to order at 9:30 a.m. and introductions were made. He asked for a motion to approve the September 17 meeting notes. There was a motion to adopt them. The motion was seconded and the notes were approved.

Legislative Update - Laurie Davies

Contact: 360-407-6103, Laurie.Davies@ecy.wa.gov

Legislative Committee Days begin tomorrow. We don't know if the Governor will call for a Special Legislative Session to address the transportation package. It is rumored that at least the Senate would like to see transportation addressed during the 2014 Legislative Session.

There will be a legislative work session on MTCA and fish consumption issues this week. There is still tension about continuing to divert money out of the MTCA account. There is a proposal to shift \$60 to \$80 million to WSDOT for storm water. Laurie said that CPG funds are pretty secure for now.

Laurie talked about our Supplemental Budget Request for biosolids funding. We're understaffed to do the work, partly because we have had difficulty filling the biosolids lead position. We need money to help fund .5 FTE to help with work on the east side of the state, and fund a GIS project to map biosolids land application sites.

There is also a Supplemental Budget Request for \$600,000 out of State Toxics. The request is from both the W2R and Hazardous Waste and Toxic Reduction programs to do alternative product testing.

Regarding legislation, Laurie anticipates seeing a paint product stewardship bill again, and electronics manufacturers will introduce a bill for mercury lights. Laurie hopes the 2014 Legislative Session will run for only the scheduled 60 days.

Status of -350 Rule Update – Kyle Dorsey

Contact: 360-407-6559, Kyle.Dorsey@ecy.wa.gov

Kyle explained the CR101 process and that we have completed necessary paperwork to move forward on rule development. We will look at input we received in last rule process before our former Governor's moratorium on rules was issued.

There is a ListServ set up for the -350 rule update, which will be the main tool for communicating with stakeholders. Kyle will check to see if W2RAC members are on it, and will add any who aren't.

Sego Jackson asked how long the rule process will take. Kyle said about three years or longer.

Jody Snyder asked Kyle to describe the major issues. Kyle said classification criteria for inert waste; when are soil types considered solid waste; streamlining reporting and recordkeeping; and definitions. The issue of financial assurance has also come up.

Laurie Davies said that we're getting a lot of pressure to look at what recycling is, and soils (e.g. earthen materials), which means we may have to look at the definition of solid waste.

Status of State Plan Update – Janine Bogar

Contact: 360-407-6654, Janine.Bogar@ecy.wa.gov

Janine said work has been underway to get input statewide on the State Plan. A survey tool was developed to get input online. There are now more than 250 people signed up on the ListServ. We will use the initial broad feedback to draft language. The goal is to complete the State Plan update by the end of 2014.

Not all input that we've received may fit in the State Plan, but are great ideas that could fit in other areas of our work. We've received a lot of comments on topics including moving upstream, regulation/enforcement, data, education, long hauling waste, and new conversion technologies.

Used Oil Collection – Gary Kato, Solid Waste Management Division Manager, City of Tacoma; Kelly McFadden & Tristen Gardner, EPA

Gary Kato described Tacoma's waste oil collection program, which has operated since 1993, and an issue that was discovered in May 2012. See Gary's PowerPoint presentation on W2RAC website. There are two tanks at the transfer station recycling center, and five tanks located at O'Reilly and Napa Auto Parts stores.

On May 4, a vendor pumped 750 gallons of waste oil from the oil tanks at the recycling center. The vendor used the Chlor-D-Tect test, the field testing protocol used by nearly all who collect waste oil from "do it yourselfers." The oil passed the test.

On May 11, the vendor notified the City of Tacoma that PCBs were found in their bulk tank. Samples were collected from both Tacoma tanks. On May 15, PCBs were found at 95.8 ppm in one of Tacoma's tanks. However, it was already diluted, so the original level of PCBs was much higher.

Gary talked about the Toxic Substances Control Act (TSCA), which is administered by EPA, and how unfamiliarity with it made issues much worse for the City of Tacoma. TSCA is a "strict liability" regulation, so the City did not have to know of the violation or do it willfully to violate TSCA. The City did not know the contamination was still considered a violation.

Consequently, the City faced three TSCA violations for the PCB contamination:

- Failure to notify EPA of PCB waste handling activities.
- Failure to prepare a PCB waste manifest.
- Distribution of PCBs in commerce.

Each violation carries a maximum penalty of \$37,500 per day. Liability for the violations starts from the day the oil was pumped. The City of Tacoma must also either test each tank before pumping, or notify and manifest each one regardless of contamination. There is a much higher liability for the City in the future, because if EPA finds the City in violation again, the City will be considered a “repeat offender.”

Gary said the City has had about 15-20 contaminated tanks over the past 20 years, with 5 or six within the last few years.

The City is working with Ecology to address regulatory issues. The City would like to implement a sampling program for its transfer station tanks and eliminate the five offsite tank locations.

Sego Jackson asked about the income from the sale of recycled oil. Gary said it’s worth about 50 cents a gallon. The five offsite tanks collected 55-60 percent of used oil. He doesn’t foresee having the tanks in the future, so that oil will either go to the transfer station or the landfill.

Dan Watts said he wants “do-it-yourself” oil exempt from TSCA. The Chlor-D-Tect test doesn’t work well.

Laurie Davies commented that the system worked during the May 2012 incident. The contractor caught the contamination and nothing was released to the environment. The flipside is that when the oil is contaminated, it can’t be recycled and has to be disposed of.

Kevin Kiernan asked if there have been other experiences than Tacoma’s. Gary said Midas was fined a few years ago. Kevin said small businesses would have a tough time absorbing the cost.

Kelly McFadden (EPA) talked about EPA’s intent to prevent PCBs from entering commerce and EPA’s enforcement discretion. In the case of the May 2012 incident, they are settling for a much lower penalty than per statute.

Tristen Gardner (EPA) said they’re finding PCBs everywhere – not just used oil, but newspaper, hydraulic fluid, caulk, paint, etc. They aren’t sure where PCBs are getting into used oil. The goal is to not further contaminate. The real issue is when contaminated oil is sold that contaminates a larger volume which then must be incinerated.

EPA is trying to get people to test more from smaller tanks. If contamination is discovered at that point and properly disposed, there is no violation. Testing with 24-hour turnaround is available for \$100. Truckers could put oil in an interim tank.

Laurie Davies asked Kelly McFadden about undertaking the process to update the PCB rule. Kelly said that TSCA needs to be reformed. The law doesn't have a lot of flexibility.

Carol Kraege said that EPA was petitioned to revise the standard for pigments and dyes and asked Kelly McFadden about the status. Kelly said she didn't know and that she would check with EPA Headquarters.

Pat Campbell commented that if you don't have collection sites, we'll go back to the days when people were just dumping oil. We need a sampling technique that's reasonable.

Dean Large talked about rigidity in the rule and the regulatory challenge for everyone. Is there a way to address the rule in a way to allow enforcement discretion to remove some liability? Kelly McFadden said they're talking nationally about different policy changes.

Jody Snyder pointed out that the typical homeowner doesn't have knowledge about PCBs. We have come a long way, e.g. not dumping down storm drains. As everyone sees what's going on with the City of Tacoma and the associated liability costs, we'll see collection sites shut down, which will leave homeowners nowhere to take their used oil.

Laurie Davies said we have to keep in mind that with any recycling program, convenience is what will cause people to recycle. If it's too hard, they won't do it.

Kelly McFadden said that EPA doesn't want the collection sites to go away.

Gary Kato talked about how for government, the monetary fine is one thing, but the fact that "government" made the mistake is particularly frowned upon. Gary asked if EPA could allow discretion for a period of time before testing.

Tristen Gardner asked why sampling can't be done on the smaller quantities. Gary Kato said the City can sample a few tanks, but not that many.

Pat Campbell said that there is no reliable field test. The only option is to take a sample, lock the tank down, and wait two days for the results. During that time, a second tank must be available to avoid shutting down operations. This means twice the number of tanks are needed.

Craig Lorch asked Gary Kato if the vendor had liability for the May 2012 Tacoma incident. Gary said the City notified the vendor when they found out about the contamination. Craig commented that it's less enticing to pick up unknown oil.

Megan Warfield asked if EPA has best management practices (BMPs) to share with others. Kelly McFadden said she did and that she would provide them to us. EPA has submitted some grants to get some better testing protocols.

Reducing Toxic Threats Strategy – Carol Kraege
Contact: 360-407-6906, Carol.Kraege@ecy.wa.gov

Carol gave W2RAC a presentation on the Reducing Toxic Threats Strategy, which is the same one she gave to the Legislature. See Carol's presentation posted on W2RAC's website. She began by describing the issues including PCB contamination in the Spokane River and Commencement Bay; consumer products; and fish. The problems are broad-based with complicated possible solutions.

Carol talked about the need for policy reform at the state level and efforts of the Toxics Reduction Strategy Workgroup, which has 12 recommendations to move forward. The Governor is to convene a group to take the recommendations to the next level. The recommendations are:

1. Safer chemicals are better.
2. System for priority setting.
3. Continue to take actions to reduce releases and exposures.
4. Washington as a leader in green chemistry.
5. Targeted education campaigns.
6. Voluntary, positive labels.
7. Equitable and predictable responsibility across the supply chain.
8. Taxes on priority toxics to support reduction efforts.
9. New tools for permittees.
10. Permittee actions to support safer alternatives.
11. Ban or restrict priority toxics.
12. Inventory and evaluation of current authorities.

Fish consumption issues are driving a lot of activities to address PCBs right now. Carol said the question is which of the 12 recommendations we can push forward in the near term. Carol is skeptical about seeing TSCA reform and talked about how Washington has testified in favor three times.

Carol gave W2RAC examples of advances in green chemistry, including how a non-phthalate method was found to weatherize the exterior of the Bullitt Building in Seattle. She also gave a demonstration on packing peanuts made of cornstarch instead of polystyrene that dissolve in water.

Dean Large asked how W2RAC could assist us and EPA to find a solution to the enforcement rule challenge. Carol said that it's a matter of looking at where PCBs are coming from in the first place.

Agenda Items for Future Meetings

- Waste Management's Behavior Study – March (?)
- Multifamily Pilots and Work Around the State – March 2014 (?)
- Scrap Metal Buyers & Need for NPDES Permits, TBD
- Presentation on Public Participation Grants - Jason Alberich, TBD

Meeting adjourned at 12 p.m.

Submitted by: Susanne McLemore